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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

IN RE: VIOXX \* Docket MDL 1657-L  
LIABILITY LITIGATION \*  
\* February 2, 2006, 9:00 a.m.  
\*  
\* New Orleans, Louisiana  
\* \* \* \* \*

**CORRECTED COPY**

STATUS CONFERENCE BEFORE THE  
HONORABLE ELDON E. FALLON  
UNITED STATES DISTRICT JUDGE

APPEARANCES :

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Kitchens & Gerel  
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For the Defendants: Stone, Pigman, Walther, Wittmann  
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Also Participating :

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1 withdrawn. They need to use the case and party management  
2 feature that LexisNexis has provided to notify everyone that they  
3 have withdrawn. That's not happening.

4 In talking with Mr. Herman this morning, we've talked  
5 about drafting an amendment to trial order Number 8 that would  
6 let us deal with that issue, but I would ask the Court to notify  
7 LexisNexis.

8 THE COURT: Yes, I do take the opportunity to urge that  
9 the parties, when they withdraw from the case, finalize their  
10 withdrawal by getting their name removed from LexisNexis, but I  
11 do realize that once the party leaves the case, I lose some  
12 control over that individual and also they get on with it so we  
13 should take that into consideration in drafting a new order and  
14 having all of that information delivered to LexisNexis before I  
15 allow them to get out of the case. So take a look at that and  
16 let's see if we can draft an order to do that.

17 MR. HERMAN: Your Honor, the next issue we have before  
18 you, the state court trial settings have been set forth and I  
19 believe the list is completed.

20 THE COURT: Okay. With regard to the state court  
21 settings, with state liaison counsel, I've been endeavoring over  
22 a period of the litigation to have some coordination between the  
23 state discovery and the federal discovery.

24 I talk often with the state court judges and the judge  
25 in New Jersey, Judge Higbee, called to my attention the fact that

1 in one of the cases, I think in the New Jersey litigation, that  
2 there was some concern about a state attorney, the attorney for  
3 the state litigants, that they weren't having an opportunity to  
4 participate fully in the depositions of the MDL. I would like to  
5 make sure that they have the opportunity. Now, it's going to  
6 take some understanding from both sides. Theoretically, in any  
7 event, there is a limitation of seven hours of deposition. I  
8 don't want the MDL people to be cut short. That simply means we  
9 may have to expand that time, if necessary, to give the states a  
10 full go on it.

11           But the MDL people have to find out when the  
12 depositions are going to be taken as quickly as possible and  
13 notify the state attorneys so that the state attorneys can get up  
14 to speed on the depositions, and we'll do it that way. I think  
15 it's to the benefit of all parties. There is no sense in taking  
16 depositions two and three and four and five times. So it works  
17 best if it's coordinated, and it's better for the litigants and  
18 it's better for the attorneys also. So I do urge that you make  
19 an effort, and the state liaison counsel, if you need to get  
20 involved in this, let's get involved with this.

21           MS. BARRIOS: Yes, sir.

22           MR. HERMAN: Your Honor, there is one issue on the  
23 state liaison. Mr. Wittmann and I some time ago submitted some  
24 additional names. I would like to discuss that with Mr. Wittmann  
25 in the coming week and we'll get back to you.

1 THE COURT: Okay. That's fine.

2 MR. HERMAN: On Number 3, the selection of cases for  
3 early federal trial, Irvin Plunkett, the jury will be picked on  
4 February 6th. And in accordance with Your Honor's conference  
5 yesterday and directives, Mr. Wittmann and I will meet before  
6 February 15th, and you've scheduled a February 15th case  
7 selection meeting.

8 THE COURT: All right, we've selected certain cases that  
9 are coming up to trial, but I want to have an ongoing process,  
10 and I have to prove the cases after we get through with the ones  
11 that aren't in the queue, so to speak. We're going to have to  
12 group them, in Louisiana cases and outside Louisiana cases.  
13 Louisiana cases, I'm directing the parties to get together, each  
14 of them five cases, that they want to have on their list.

15 They'll exchange the list, and each side will have two  
16 strikes. Those strikes will then -- those cases will be taken  
17 out of the mix and I'll have before me six cases that are  
18 Louisiana cases that are going to be in the queue so that  
19 specific case, specific discovery, can proceed on those cases.  
20 And I'll put them in the queue as is appropriate. And I'll get  
21 with the parties, we'll get some dates, and I'll put them in the  
22 case.

23 Outside Louisiana cases, it's going to take a little  
24 effort because I don't have as much authority in the outside  
25 Louisiana cases in view of Lexicon, so I need the cooperation of

1 counsel. I'm looking to liaison counsel on both sides to meet  
2 and confer on those issues and we'll get cases that are ready for  
3 trial and are instructive outside of Louisiana and put those also  
4 in the queue. And anybody who's interested in trying their cases  
5 ought to be contacting the liaison counsel about their cases so  
6 we can move them us.

7 MR. WITTMANN: We do have one case set with Your Honor  
8 for June 12th and we have another one with mid-May. And I wanted  
9 to round out the report on that.

10 THE COURT: Right.

11 MR. HERMAN: Your Honor, we've been asked on behalf of  
12 the plaintiffs that all Louisiana plaintiff's counsel meet with  
13 me right after this conference today. I know Your Honor has  
14 argument in other matters, but as soon as this conference is  
15 over, if Louisiana counsel will meet with me, we have a number of  
16 things to discuss and on that agenda will be case selection.

17 THE COURT: I know, Mr. Becnel, you've expressed an  
18 interest in trying some cases. I'm interested in giving you that  
19 forum, so coordinate it. You've got to make sure, though, that  
20 you pick the cases that you are ready to try and that they are  
21 consistent with policies, and we'll get them teed up.

22 MR. BECNEL: Judge, may I make a further suggestion?

23 THE COURT: Sure.

24 MR. BECNEL: In both *Guidant* and *Medtronic*, which are  
25 two other MDLs, we keep talking/not talking to Mr. Wittmann about

1 the possibility, the Court is looking for cases that are  
2 instructive to try to get to some end game in this case. I've  
3 talked to Mr. Wittmann and I think he was going to pass it by  
4 some of his people for maybe trying some alternative dispute  
5 resolution methods, like a three-day, four-day, five-day summary  
6 trial, with not only this court sitting and watching, but  
7 inviting the state court judges who may not have tried a case yet  
8 or may have a bunch to try, to see five or six or eight  
9 plaintiffs and see if that might not help with something  
10 instructive and have both the representatives, some of the  
11 representative plaintiffs here and have some of the people  
12 representing not only the defense attorneys, but the people that  
13 ultimately make those decisions on checkwriting.

14           We're going to be doing that in both *Guidant* and  
15 *Medtronic* at the direction of the court immediately. And I think  
16 that might be something that would be helpful to this court to  
17 say, these cases are no good, the plaintiff lost these; these  
18 cases are excellent or some, something in between. For three or  
19 four days, it ain't going to hurt, and I would just urge in  
20 selection you could either use -- and there, since it would be a  
21 summary trial, you could have picks, both plaintiffs and  
22 defendants, from all over the country without a Lexicon problem.

23           THE COURT: Okay. Thank you for the suggestion.

24           The next item is the class actions.

25           MR. HERMAN: Yes, Your Honor, Mr. Arnold Levin will

1 address that issue for the PSC. I would appreciate it, I know  
2 it's a mere oversight, but if counsel for any of the parties in  
3 the MDL on the plaintiff's side are going to approach  
4 Mr. Wittmann, I would like to be consulted at least to know that  
5 that's happening. But I'm sure it's just an oversight.  
6 Arnold Levin.

7 MR. WITTMANN: Your Honor, I'm always available to talk  
8 to counsel for the plaintiffs whether they go through Mr. Herman  
9 or not.

10 MR. HERMAN: If we could stipulate to that, I can move  
11 on.

12 MR. LEVIN: We'll see the Court at 1 o'clock.

13 THE COURT: Okay, we have some class action motions at  
14 1 o'clock.

15 MR. WITTMANN: Just to report, that subjects is being  
16 directed by Mr. Levin and Mr. Beisner, who know a lot more about  
17 this than I do. There are three motions set for today at  
18 1 o'clock. The people might like to know that. We've got our  
19 Rule 12 motions to dismiss the medical monitoring master class  
20 action, and the purchase claims complaint, and also to be heard  
21 is the PSC's motion for suggestion to remand the motion for class  
22 certification under the proposed nationwide personal injury and  
23 death class, wrongful death class actions, so I want everybody to  
24 know that's coming up.

25 THE COURT: That's right. Okay, the next item is

1 discovery directive to Merck. Any issues on that?

2 MR. HERMAN: Several issues, Your Honor, with respect to  
3 privileged documents, Mr. Lopino, who is handling that matter  
4 principally for the PSC with Mr. Tisi, and Mr. Arsenault is here.  
5 I'll meet with him as soon as this status conference is over so  
6 that we can discuss some additional categories. I'll notify  
7 Mr. Wittmann to get together with him before the 15th so that we  
8 can deal with the privilege issue.

9 With respect to the request for production of Merck's  
10 insurance policies, I understand we'll be furnished those today.  
11 The Arcoxia and foreign data was due on January 30, '06. I  
12 understand that some production has already taken place and that  
13 the full production will be complete by the end of next week, and  
14 I believe that takes care of the plaintiff's discovery in the  
15 record.

16 THE COURT: Yeah, I'll put that in a minute entry to  
17 make sure that's being done. I'll expect it, then, to be  
18 finished by next week.

19 With discovery directed to the FDA, we've had some  
20 questions on the FDA and also the cost involved.

21 MR. HERMAN: On the cost issue, at -- with your  
22 assistance, Mr. Davis, on behalf of the PSC and Mr. Mike Levy, on  
23 behalf of the FDA, spoke today and will be speaking again about  
24 cost issues. We'll serve very shortly on Sharon Smith, the U.S.  
25 Attorney, our motion to challenge the FDA's privilege log, but we

1 will make it a very precise targeted objection to only a certain  
2 number of documents and ask that with the motion is filed that  
3 the hearing date and briefing time on those issues be expedited.

4 THE COURT: Okay. With regard to the first issue, the  
5 cost, I expressed my view to the FDA that I appreciate them  
6 meeting with plaintiff's counsel and discussing an amicable way  
7 of resolving any particular cost issues. I appreciate any  
8 understanding from the FDA and the Court would appreciate any  
9 help they can give on that. If it cannot be resolved amicably,  
10 then it should be set for me. In a contradictory motion, I'll  
11 hear from the parties and I'll rule on it.

12 The other issue is that of production of the privilege.  
13 My thinking is that if the precise documents are objected to or  
14 some limited amount that's at issue, I'm going to instruct the  
15 FDA to deliver those documents for an in-camera inspection and  
16 I'll review them and be able to rule on it as quickly as I can.

17 And with regard to the -- also, the outstanding  
18 privilege issues that involve Merck, I have received at my  
19 request, Merck delivered to me all of the documents at issue.  
20 There are some 80 or 90,000 documents, boxes stacked up to the  
21 wall. What my plan is there is to have the parties devise  
22 categories. I've given them my suggestions as to categories.  
23 They may have to flush out or create another category or two.

24 Those documents would be electronically placed in each  
25 of those categories and then I'll review a representative sample

1 of each of the categories and rule on that. I'm not able to look  
2 at 80 or 90,000 documents. I'll have to shorten that process,  
3 but that's what we're going to be doing on that and I'll rule on  
4 it and get those issues resolved.

5 Discovery directed to third parties?

6 MR. HERMAN: No issue, Your Honor.

7 THE COURT: What about deposition scheduling?

8 MR. HERMAN: Your Honor has already addressed that the  
9 MDL or PSC has the primary role in taking those depositions at  
10 the seven-hour period. It may have to be extended. The  
11 defendants have agreed to provide me, in advance, any dates that  
12 notices will be of depositions so then we can liaison with the  
13 state attorneys and attempt to resolve any issue, but we'll need  
14 to know the dates in advance of the notice being filed.

15 MR. WITTMANN: On cross-noticing of these depositions,  
16 Judge, we'll try and give ten day's notice, and if for some  
17 reason something is expedited, we'll contact Mr. Herman or  
18 Ms. Barrios and get them to work with us on what needs to be  
19 expedited. We always try to make a ten-day notice, Judge.

20 THE COURT: Great.

21 MR. HERMAN: Mr. Wittmann and I have discussed with  
22 Your Honor this morning, pretrial order Number 17, and I wish to  
23 have it clarified, I'll meet with Mr. Wittmann hopefully next  
24 week and we'll see if we can work out that issue as between us  
25 without having the Court deal with it.

1 MR. WITTMANN: I think we can resolve that, Judge.

2 THE COURT: Yeah, that issue should be able to be  
3 resolved. I'm counting on the parties to do that.

4 The next item is plaintiff profile form and Merck  
5 profile forms.

6 MR. HERMAN: There has been some contentiousness between  
7 the parties, albeit righteous differences of opinion. We're  
8 concerned about the defendants, let's see if I can find a  
9 delicate way to say this, the defendants picking at certain  
10 answers or nonanswers, which we don't think are really germane.

11 THE COURT: Scrutinizing is a better term.

12 MR. HERMAN: That is a much better term, thank you,  
13 Your Honor.

14 And on the other hand, Merck would like to have some  
15 amendments to the Merck form. We're presently attempting to  
16 resolve both of these issues through discussions. Hopefully, we  
17 can do that very shortly.

18 THE COURT: Let's not work yourself out on dealing with  
19 that issue. I would like to see both of you resolve it, but if  
20 you can't resolve it, then give it to me and I'll resolve it  
21 immediately. Let's not spend a great deal of time on something  
22 like this.

23 MR. WITTMANN: No, we're not doing -- what we're doing  
24 now actually is when we just run the gamut with the plaintiff  
25 profile forms, we decided to go forward with Your Honor's

1 suggestion. We're filing motions to dismiss in groups of 25, and  
2 we filed 75 motions to dismiss this morning in three separate  
3 motions.

4 THE COURT: I'll set them for hearing. I'll instruct  
5 that we'll serve the parties and hear from them after giving the  
6 proper notice and an opportunity to be heard. If profile forms  
7 are not forthcoming, then I'll have no alternative but to dismiss  
8 the case for lack of prosecution. But we'll take that one step  
9 at a time.

10 Federal state coordination. State liaison committee?

11 MS. BARRIOS: Good morning, Your Honor, Dawn Barrios for  
12 the State Liaison Committee. On behalf of the New Jersey and the  
13 Texas litigants, I would appreciate the effort that Merck has  
14 extended, as well as the PSC, Your Honor, for helping work out  
15 the cross-notice issue. I was alerted to that about two weeks  
16 ago and I have contacted Merck and the PSC and I was happy that  
17 everybody was able to resolve it.

18 I also have, Your Honor, the CD for the Court on all  
19 the orders of remand and the motions for remand. We have not  
20 been able to find any in 2006, but this CD represents a  
21 comprehensive list of everything we've given to you before.

22 THE COURT: Thank you very much.

23 MS. BARRIOS: Thank you, Your Honor.

24 THE COURT: You bet.

25 MR. HERMAN: Your Honor, I neglected under discovery in

1 the FDA to mention something very important to plaintiffs, both  
2 in federal and state action, and that has to do with Dr. Graham's  
3 deposition and the FDA's motion to quash.

4           The FDA is looked at by plaintiffs not as a watchdog  
5 agency, but as a protective agency for the benefit of drug  
6 companies, particularly evidenced by their recent effort upon  
7 lobbying by drug companies to have a total preemption in  
8 litigation for drugs that are once approved by an under-funded  
9 FDA which has no laboratories of its own.

10           In the upcoming trial, Mr. Beck is an extraordinarily  
11 gifted attorney who has used, in prior trials and in the Irvin  
12 prior trial, an FDA defense of one sort or another. It may not  
13 be possible to get the Graham deposition at this juncture, but on  
14 behalf of all plaintiffs, I would be remiss if I didn't state how  
15 critically important it is for plaintiffs to at least have access  
16 to those FDA officials and former FDA officials who have the  
17 courage to speak out about the FDA. And I make this statement to  
18 Your Honor knowing that it may not be possible to have a ruling  
19 at this point, but it is of paramount importance.

20           THE COURT: I do understand the issue. I've received  
21 that issue about five or six days ago, and through no fault of  
22 anybody, and in the middle of this litigation, I'm dealing with a  
23 lot of motions in limine and a lot of deposition review and  
24 things of that nature. But I am conscious of it. I'm in the  
25 process of working on the issue and I will get it out.

1 Unfortunately, I don't see my ability to get it out before this  
2 trial, because it may be meaningless if there are depositions to  
3 be taken, it's distracting to the attorneys. So I'll issue it  
4 whenever I can, but I'll get on that immediately. I understand  
5 the issue fully.

6 MR. WITTMANN: And you understand our position, too,  
7 Your Honor?

8 THE COURT: Yes, I do. Right. And I note your position  
9 and FDA's position and the plaintiff's position.

10 Pro se claimants?

11 MR. WITTMANN: Yes, Your Honor, we've had a problem with  
12 pro se prisoner complaints and we need to clarify provisions of  
13 preorder 15A so that we can be relieved of having to respond to  
14 these pro se complaints. I've talked to Mr. Davis and Mr. Herman  
15 about that and hopefully we'll be able to reach some resolution  
16 of that before our next conference.

17 THE COURT: A couple of issues there. One is the proper  
18 pro se person filing the case and interrupting prescription or  
19 doing whatever they need to do to make their presence known. The  
20 problem is is that that can't consume the litigant's in this  
21 particular case, so we've got to devise a way of at least  
22 recognizing those or putting them on ice in some form or fashion,  
23 and then the next step, of course, is, we need to appoint a  
24 curator to at least look into those cases and recommend or  
25 discuss or advise these people of their various rights. It

1 really is a two-step process. If the parties can't resolve it,  
2 I'll do it.

3 Motion for clarification of pretrial order Number 19.  
4 That's an issue that I understand that the parties would like an  
5 opportunity to discuss with me in chambers. I'll do that  
6 afterwards. Counsel, why don't you make your presence on the  
7 record.

8 MR. THOMPSON: Fred Thompson. I am the movant in that.  
9 You're correct, if we could have an opportunity to discuss this,  
10 I think we would resolve it.

11 THE COURT: Okay, fine. I appreciate you being here,  
12 Mr. Thompson. I looked at your motion, and I think we can  
13 resolve it. Hopefully you and Mr. Hampton have some preliminary  
14 discussions and then we'll meet in the conference room after this  
15 meeting and we'll see you there. Thank you very much.

16 The Motion to Dismiss foreign class action.

17 MR. HERMAN: The PSC has no position on that issue.

18 THE COURT: Where are we with that, Mr. Wittmann?

19 MR. WITTMANN: Briefing is not complete, but it was  
20 scheduled for hearing initially on February 2nd, but the parties  
21 have agreed that the motion shouldn't be heard because of the  
22 fact that briefing is not complete. And I don't think a date has  
23 been selected, has it, Mr. Beisner?

24 THE COURT: Let me hear from the parties, the counsel  
25 for the plaintiff or the movers.

1           MR. MOLL: Your Honor, Kenneth Moll on behalf of the  
2 foreign plaintiffs. Our firm has had on file a complaint for  
3 foreign plaintiffs over a year and this court has stayed  
4 litigation in these cases for about a year. So I think the mere  
5 filing of the FNC motion in this court violates the stay order,  
6 and I think that's the first issue that needs to be addressed by  
7 Your Honor.

8           THE COURT: Okay. Anything?

9           MR. BEISNER: Your Honor, the background on this is that  
10 the order, the case management order in this case, was the fact  
11 that any class claim that the PSC wished to proceed with should  
12 be filed in the form of a master complaint. These claims were  
13 left out by the PSC, so there was an indication that they were  
14 not going to proceed with those. We would like to get that  
15 cleaned up, and there is, not only a reason under the case  
16 management order to do that, but also a substantive reason to  
17 dismiss these claims. So that's why we've brought the claim,  
18 they think it should be heard. These claims are from  
19 jurisdictions all over the world and there needs to be a  
20 resolution as to whether or not these claims are going to be  
21 heard here or not, because the PSC is not pursuing them. So we  
22 believe this motion should be heard right away, Your Honor.

23           THE COURT: All right. Well, let me set some briefing  
24 schedule on that issue, too. That's a preliminary issue that we  
25 should deal with.

1           MR. MOLL: Yeah, pursuant to order Number 1, the cases  
2 are stayed. The Court issued a subsequent order to order Number  
3 16 that directed the PSC to file a master class action complaint  
4 for all class actions and they elected not to file on behalf of  
5 all claimants, and, therefore, there is some confusion whether or  
6 not this is a PSC issue.

7           THE COURT: Sure. We need to resolve those so that  
8 you're not just hanging one way or the other. You need to know  
9 where you are and whether you've interrupted prescription,  
10 various other things --

11           MR. MOLL: Well, we would submit that it's not only  
12 stayed, but I think it's premature in Lexicon.

13           THE COURT: Could well be, it could well be. But give  
14 me some input from you all as to what time you need. What's a  
15 reasonable briefing?

16           MR. MOLL: Are you asking for a briefing, because we  
17 could work out a briefing schedule --

18           THE COURT: Would you do that?

19           MR. MOLL: -- with respect to the premature or the  
20 initial issue.

21           THE COURT: Do that, split the issues, let me look at  
22 them and get together on some kind of briefing schedule.

23           MR. MOLL: Thank you, Your Honor.

24           MR. HERMAN: Your Honor, may I address the Court?

25           THE COURT: Sure.

1           MR. HERMAN: On behalf of the PSC, although we take no  
2 position with regard to the foreign nonconvenience argument, we  
3 do take a position with regard to the stay. We do not choose to  
4 bring that claim in our master complaint and we would like it  
5 resolved. We don't want it staying here like heartburn for the  
6 rest of the litigation.

7           THE COURT: Okay. All right, the next item --

8           MR. LEVIN: Heartburn was Propulsid.

9           MR. HERMAN: I'm in the right court.

10          THE COURT: Next item is Louisiana Attorney General.

11          MR. WITTMANN: Yes, Your Honor, I spoke to Mr. Dugan  
12 this morning and we're going to meet again this week or next week  
13 after we finished the jury selection in the Plunkett case, and  
14 that matter is set for hearing on February 15th. And we'll be  
15 filing our response next week.

16          MR. DUGAN: Morning, Judge.

17          THE COURT: Good morning.

18          MR. DUGAN: James Dugan on behalf of the Louisiana  
19 Attorney General and Blue Cross of Louisiana. And that is  
20 correct. Hearing is set the 15th on the motion. We filed a  
21 motion for expedited consideration of the motion to remand the  
22 attorney general case, or the alternative, the motion to  
23 consolidate both of the cases for trial. In accordance with  
24 Your Honor's directive to try a case in this court, Louisiana  
25 attorney general and Blue Cross of Louisiana would just like

1 their day in court, Your Honor.

2 THE COURT: What do you anticipate? How many cases;  
3 what are we dealing with?

4 MR. DUGAN: Two cases, Your Honor, two single cases  
5 consolidated. One is a private economic claim and the other is a  
6 public economic claim. A very similar case was tried in the  
7 tobacco litigation on behalf of Minnesota Blue Cross and the  
8 Minnesota attorney general. So it absolutely can be tried, Your  
9 Honor, and I would be more than happy to meet with Mr. Wittmann  
10 to work out a schedule.

11 MR. WITTMANN: I think we'll have some motions with  
12 respect to those cases before we reach that point, Your Honor.

13 THE COURT: I understand. All right. Get with me,  
14 then, on the -- when can you all do that; when can you work out a  
15 schedule?

16 MR. WITTMANN: We'll meet next week, Your Honor, and get  
17 you a schedule.

18 THE COURT: Okay. That's good.

19 MR. DUGAN: Thank you, Judge.

20 THE COURT: Thank you. New motions? That's the last  
21 item on the agenda.

22 MR. WITTMANN: Just one. We have a motion that's been  
23 filed in the Magee case, *Magee v. Merck*, a motion to modify  
24 pretrial order 18B to relieve plaintiffs from having to upload  
25 medical records via LexisNexis file and serve.

1 THE COURT: What is that one about? Is anybody here  
2 from the plaintiffs on that particular matter?

3 MR. WITTMANN: I don't know.

4 MR. HERMAN: No, Your Honor.

5 THE COURT: I have two rules in the MDL. One rule, of  
6 course, is to look at the individual cases. I do that by setting  
7 it for trial and hearing from individuals. But I also have a  
8 global rule and the global rule is to keep in mind all of the  
9 cases and to make them run efficiently and not to consume all of  
10 the expense or time in dealing with it, and that's why it's --  
11 with medical records, it's easier to upload than it is to get  
12 them in hard copy. It might not matter for one case, but it  
13 matters for a hundred thousand cases. And so I want to give the  
14 plaintiff an opportunity to speak on that issue, but I don't see  
15 doing it in one case.

16 I just -- you know, I've given it a lot of thought when  
17 we went into the uploading and methods of disseminating this  
18 information, and if you have to do it in hard copy, it's going to  
19 take too long and it's going to take too many resources. So  
20 it's -- I don't see it being done or able to be done in all the  
21 cases. And I can't just single one out and say, Do it in this  
22 particular case. So I'm concerned about this request.

23 MR. HERMAN: Your Honor, it's -- the motion was just  
24 filed. The PSC hasn't had an opportunity to really consider it  
25 for position. I think that Mr. Wittmann and I would both prefer

1 that it be set down for the next status conference, and in the  
2 meantime, we can contact the attorney and Your Honor can provide  
3 whatever scheduling Your Honor wants.

4 THE COURT: All right. That's fair enough. I'll do  
5 that.

6 Any new business? Either from the PSC or from the  
7 audience regarding this status conference? March 3rd. I'm told  
8 that's the Friday of Mardi Gras week. Is that a problem for  
9 anybody, March 3rd?

10 MR. WITTMANN: A problem for me.

11 MR. HERMAN: Are you costuming this year?

12 MR. WITTMANN: No, I'm going to Key West.

13 MR. HERMAN: Are you fishing?

14 MR. WITTMANN: Yes, I am.

15 MR. HERMAN: I'll be there, too. How about the next  
16 week, Your Honor.

17 THE COURT: March 23rd is the best I can do. It's heavy  
18 criminal trials between then.

19 MR. WITTMANN: March 23rd?

20 THE DEPUTY CLERK: It's a Thursday.

21 MR. HERMAN: Your Honor, would Your Honor consider  
22 setting that at 10 o'clock?

23 THE COURT: Yeah, that's fine. We'll do that. And I'll  
24 see liaison counsel before the meeting at 9 o'clock.

25 Anything further?

1 Thank you very much. The court will stand in recess.

2 THE DEPUTY CLERK: Everyone rise.

3 (End OF COURT)

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## REPORTER 'S CERTIFICATE

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2  
3 I, Cathy Pepper, CCR, RPR, CRR, Official Court Reporter,  
4 United States District Court, Eastern District of Louisiana, do  
5 hereby certify that the foregoing is a true and correct  
6 transcript, to the best of my ability and understanding, from the  
7 record of the proceedings in the above-entitled and numbered  
8 matter.

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13 Official Court Reporter  
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